UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

August 15, 2000 at 9:00 a.m.

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1. 00-92305-A-13 DEBRA A. OCHOA
ADR #1
ROBERT O. YOHANAN SR. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/24/00 [14]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1). The movant completed a nonjudicial foreclosure sale on June 13, 2000, at 2:38 p.m. This case was filed on June 13, 2000, at 3:40 p.m. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law as intimated by the debtor (but a contention that is supported no evidence), this can be asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the plaintiff prove that each of the statutory procedures has been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989). The automatic stay is not a free preliminary injunction. It is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper will be decided in state court. It would be ironic if this bankruptcy somehow stood in the way of the resolution of this issue.

2. 00-92305-A-13 DEBRA A. OCHOA
GMP #1

HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY NEIL VANCE, TRUSTEE OF THE NEIL VANCE FAMILY TRUST DATED 4/27/99
7/20/00 [13]

Tentative Ruling: This case was filed on June 13, 2000, at 3:40 p.m. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure and attempted to repay the debt that was satisfied by the foreclosure. Any plan that is confirmed must require that the debtor prevail in her state court claim/defense that the foreclosure was void or voidable before the debtor can attempt to cure the default on the deed of trust.

The debtor has 15 days to file an amended plan and a motion to confirm it.

Once filed, the debtor has 30 days to obtain confirmation. If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

3. 99-90809-A-13 ADOLPH & EVANNA EGOROFF
MWF #1
HOMESIDE LENDING, INC. VS.

CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
6/27/00 [40]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The court is not ratifying the post-petition notice of default. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay seven post-petition installments. This is based on the accountings provided by both parties. The accounting provided by the debtors ignores the fact that they did not begin making post petition installments until May, 1999 when the first payment was due in March, 1999. They also failed to make payments from July 2, 1999, through November 8, 1999. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

4. 00-90111-A-13 PATRICIA SHANNON
MPD #1
WORLD SAVINGS VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/26/00 [22]

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay five post-petition installments. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

5. 00-90528-A-13 ERIC WAYNE RENSHAW
FW #3

HEARING ON MOTION TO MODIFY DEBTORS CONFIRMED CHAPTER 13 PLAN
7/21/00 [34]

Tentative Ruling: The motion is denied. The plan is not feasible as witnessed by the fact that the direct payments owed to Bank United/CHFA have not been paid for five months. Further, the debtor only made one monthly payment required by the original plan. None have been made since April. It appears that the debtor's income is not sufficiently regular to permit him to make monthly payments to the trustee. Second, the plan will take 64 months to

be completed. The plan does not comply with 11 U.S.C. § 1322(d). Third, the plan fails to provide for the secured claim of Viking Federal Credit Union as required by 11 U.S.C. § 1325(a)(5).

6. 97-93635-A-13 DEAN & CATHY GATEWOOD
KBR #1
GMAC MORTGAGE CORPORATION OF PA
AND FEDERAL NATIONAL MORTGAGE

CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
PART II
7/3/00 [35]

Tentative Ruling: The motion is denied. From the additional filed by the debtors, it appears that they have cured the post petition default to the movant. There is no cause to terminate the stay.

7. 00-90638-A-13 ROSALIE JOSEPHINE CARBAJAL
MPD #1
SECURED BANKERS MORTGAGE CO. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/26/00 [[17]

Tentative Ruling: The motion is denied. First, this motion was filed on July 26, 2000, pursuant to Local Bankruptcy Rule 4001, Part II. On July 21, 2000, that rule was amended to require as follows: “In a Chapter 13 case, if the motion alleges failure to make postpetition payments with respect to real or personal property, including but not limited to real estate, vehicle, or lease payments, creditor shall include a verified statement showing all postpetition charges, all payments received postpetition, dates thereof, and the charges to which each of the payments was applied.” This accounting is not included with the motion. For that reason alone, the motion is denied without prejudice. Second, the opposition convinces the court that there has been no post petition default.

8. 00-91451-A-13 LEEROY & SABRINA EDMOND
ASW #1
GUARANTY FEDERAL BANK FSB VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/26/00 [13]

Tentative Ruling: The motion is denied. A plan has been proposed that pays the claim of the movant. The plan is not in default. While a prior case was filed and dismissed, such was precipitated by the failure of the movant to file a proof of claim, making it impossible to provide for the claim in the prior case.

9. 00-91759-A-13 SHANA M. AGRELLA
RLE #1
CHRYSLER FINANCIAL COMPANY
L.L.C. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY AGAINST DEBTOR AND AGAINST A NON-FILING CO-DEBTOR ETC
PART II
7/24/00 [32]

Tentative Ruling: The motion for relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1). A plan has been proposed providing for the claim of the movant. Because the claim is modified and will be paid in full through the plan, all contractual payments have halted. Nonetheless, this is the second case filed by the debtors. In the first, the creditor received no payments. There is a 13-month pre-petition arrearage. The debtor has failed

to convince the court that this case will be more successful. Her unsworn statement that she has reorganized her finances is too conclusory. And, the fact that she has made plan payments is not sufficient evidence that she will or can in the future. It appears she did the same and the first case then stopped making payments once the plan was confirmed. For the same reasons, the motion to terminate the codebtor stay of 11 U.S.C. § 1301 is granted.

10. 00-90162-A-13 RAYMOND O. NEWMAN III
RDB #1
CITIMORTGAGE, INC. VS.

CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
6/22/00 [11]

Tentative Ruling: The motion is denied. The court has confirmed a plan. That plan provides for payment of the movant's claim. The plan is not in default. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. There is no outstanding breach. If there is a breach, it is a matter of locating a unapplied check or money order. No fees and costs are awarded.

11. 99-95578-A-13 SANDRA BURNHAM
ASW #1
TEMPLE-INLAND MORTGAGE CORP. VS.

CONT. HEARING ON RESET MOTION FOR RELIEF FROM STAY ETC
2/29/00 [19]

Tentative Ruling: The motion is denied. It appears that the debtor tendered a mortgage payment but the check was not cashed. She has replaced that check and cured the post petition default. **The declaration of Ame Rivera filed August 14, 2000, is stricken as untimely. Any reply is due two court days prior to the hearing. This ruling was prepared after the time for reply had lapsed and before the declaration was received. Further, the accounting included in the declaration should have been included in the original motion.**

12. 95-93483-A-13 ELISEO & SHARON SAENZ
JAY #1
CONSECO FINANCE SERVICING CORP. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART III
7/19/00 [32]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part III. If the debtor, the trustee, or any other party in interest appears in opposition to the motion, the court will assign a briefing schedule and a final hearing date and time. If no one appears in opposition to the motion, the court will take up the merits of the motion.

13. 00-92148-A-13 SARA MONIQUE MESTAS — HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF THE DEBTOR TO PAY INSTALLMENT FILING FEES ($36.00 DUE ON JULY 3, 2000) 7/6/00 [12]

Tentative Ruling: Unless the debtors produce evidence that they have cured the default on the installment filing fee, the case will be dismissed. The court's records show that the installment due July 3, 2000, and thereafter have not been made. Given the default, the entire unpaid fee must be paid.

14. 00-90110-A-13 DAVID ELLIS
CLH #2 — HEARING ON FIRST AMENDED CHAPTER 13 PLAN 7/25/00 [38]

Tentative Ruling: First, no motion has been filed nor evidence to support it. Second, the proposed plan payment will not permit the plan to both complete with 54 months and pay the promised dividends. The plan is not feasible. Third, the proposed plan is not feasible as witnessed by the failure of the debtor to maintain direct post petition payments to Signet Bank, the successor of First Union. Fourth, the court has valued Signet's security at $163,000. The plan ignores this and states the value is $90,000.

15. 00-91417-A-13 KATHY HUBBARD
JMO #2
KATHY HUBBARD VS.
WILLIAM & JANICE COE — HEARING ON MOTION TO AVOID LIEN 7/17/00 [17]

Tentative Ruling: The motion is granted in part pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $96,000 as of the date of the petition. The unavoidable liens total $65,000. The debtor has an available exemption of $13,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is $18,000 in equity to support the judicial lien. While the original motion indicated the exemption was $50,000, Schedule C reveals that only a $13,000 exemption was claimed. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided. Therefore, except to the extent the claim may exceed $18,000, the motion is denied. This means that a total of $160.96 of the lien is avoided.

16. 00-91417-A-13 KATHY HUBBARD
JMO #3 — HEARING ON MOTION TO CONFIRM FIRST AMENDED PLAN 7/17/00 [20]

Tentative Ruling: The motion is denied. First, given the ruling on the preceding motion, the plan cannot be confirmed because it does not provide for the $18,000 secured claim of the Coes. 11 U.S.C. § 1325(a)(5). Second, the plan is not feasible as witnessed by the failure to make the June plan payment.

17. 00-90618-A-13 THEODORE H. PALISE
WW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM NO. 8 OF ORNAMENTAL IRON SUPPLY, INC. 7/17/00 [23]

Tentative Ruling: The deadline for proofs of claim was June 27, 2000. The creditor filed its proof of claim on July 10, 2000. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim must be disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). A review of the notice, which included the bar date for proofs of claim, served by the trustee on March 3, 2000, indicates that it was served on counsel for the claimant.

The creditor in response to the objection goes off on a tangent arguing that the debtor has concealed assets, that the case should be dismissed, and that a plan should not be confirmed. If there is cause to dismiss the case, a motion should be filed on 22 days' notice to the debtor, the trustee, and all other creditors. The debtor's alleged concealment of assets has nothing to do with whether the creditor has filed a timely proof of claim.

The court also notes that many of the allegations in the response can be interposed as an objection to confirmation of the plan. Because the deadline for objections is 14 days following the adjournment of the meeting of creditors and because the meeting has been continued to August 23, the objections may still be interposed.

The Ninth Circuit recognizes that a claim may be presented informally. An informal proof of claim "must state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable." Sambo's Restaurants, Inc. v. Wheller (In re Sambo's Restaurants, Inc., 754 F.2d 811, 815 (9th Cir. 1985). Also see In re Franciscan Vineyards, Inc., 597 F.2d 181 (9th Cir. 1979), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985). Any writing communicated to the debtor before the expiration of the claims' bar date that clearly summarizes the creditor's claim and makes clear that it intends to enforce that claim against the debtor can suffice as an informal proof of claim. A subsequently filed and tardy formal proof of claim is considered an amendment of the timely filed informal proof of claim. "A creditor is permitted to file a proof of claim after the bar date when the proof of claim is an amendment to a timely filed claim. . . ." In re Osborne, 159 B.R. 570, 573 (Bankr. C.D. Cal. 1993), *affirmed*, 167 B.R. 698 (B.A.P. 9th Cir. 1994), *affirmed*, 76 F.3d 306 (9th Cir. 1996).

An informal proof of claim can be a pleading filed in the bankruptcy case. For instance, in the chapter 13 context, several courts have construed objections to confirmation of chapter 13 plans as informal proof of claims. See e.g., Washington v. Nissan Motor Acceptance Corp., (In re Washington), 158 B.R. 722, 724 (Bankr. S.D. Ohio 1993); In re Benedict, 65 B.R. 95, 96 (Bankr. N.D. N.Y. 1986). Other pleadings filed in the bankruptcy court also have been accepted as informal proofs of claim. See e.g., In re Sherret, 58 B.R. 750, 751 (Bankr. W.D. La. 1986) (adversary proceeding); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985) (motion for relief from automatic stay). In

this case, no pleadings by the claimant appear in the court's file that "state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable."

The claimant also asks that pleadings filed in state court prior the filing of the bankruptcy petition be considered an informal proof of claim. 11 U.S.C. § 501 specifies that a claim must be "filed". Most authority suggests that this means filed in the bankruptcy court. 4 Collier on Bankruptcy, ¶ 502.02[1][b] (Lawrence King, et al., eds. 15th rev. ed. 1999). However, there is considerable case law that permits any writing given to the debtor or trustee after the filing of the petition to serve as an informal proof of claim. The writing offered by the claimant is its state court complaint. It was filed August 19, 1999, several months before the petition was filed. This cannot be an informal proof of claim. To qualify, the claim must be made and given to the debtor/trustee after the filing of the petition. If the court were to permit a pre-petition writing given to the debtor prior to the filing of the petition to serve as an informal claim, any creditor with a contract or a bill would have a proof of claim. The requirement of Fed.R.Bankr.P. 3001 cannot be so easily evaded.

The claimant finally asks that its oral statements to the trustee through its counsel, both at the first meeting of creditors and at other times, be considered an informal proof of claim.There are no reported cases allowing an oral informal proof of claim. Indeed, many courts have been explicit in their requirement of a writing:

> The point is that 'there must have been presented, within the time limit, by or on behalf of the creditor, some written instrument which brings to the attention of the court the nature and amount of the claim.'

Franciscan Vineyards, 597 F.2d at 183 (quoting Perry v. Certificate Holders of Thrift Savings, 320 F.2d 584, 590 (9th Cir. 1963). A written claim is also mandated by Rule 3001(a) which states that a "proof of claim is a written statement setting forth a creditor's claim." Fed.R.Bankr.P. 3001(a). Therefore, oral statements cannot be an informal proof of claim.

The court concludes that there is no informal proof of claim. Therefore, the objection to the tardy formal proof of claim is sustained. This ruling will not preclude the creditor from seeking dismissal or objecting to confirmation of a plan.

The court does not reach the issue of whether the claimant is secured by a constructive trust. Whatever kind of claim it has, that claim will not be paid in this case. The debtor's personal liability will be discharged. If the claim is secured, the lien will survive the debtor's discharge. See Matter of Penrod, 50 F.3d 459, 461-464 (7th Cir. 1995); In re Thomas, 883 F.2d 991, 998 (11th Cir. 1989), *cert. denied*, 597 U.S. 1007 (1990) (confirmation of a plan cannot extinguish a lien for which no proof of claim was filed); In re Bisch, 159 B.R. 546, 549 (B.A.P. 9th Cir. 1993); In re Work, 58 B.R. 868, 873 (Bankr. D. Ore. 1986).

18. 00-90323-A-13 RAYMOND & JONI PACHECO
DN #5

CONT. HEARING ON MOTION TO DETERMINE VALUE OF COLLATERAL FILED BY FIRST PLUS FINANCIAL 4/11/00 [17]

Tentative Ruling: The subject property has a value of $47,000 and is encumbered by a first deed of trust. The first deed of trust holder is owed $57,740.00. Therefore, the respondent's deed of trust is completely under-collateralized. No portion of its claim is an allowed secured claim. The claim is allowed as general unsecured claim unless previously paid by the trustee as secured claim.

The court has found the appraisal of Teresa Lambert to be the best indicator of value. The subject property is relatively small (780 square feet) and is in poor condition. The comparables in Ms. Lambert's appraisal appeared to bear a closer semblance to the subject property, particularly 2312 Crommelin Ave. and 2221 Strivens Ave. The latter appears to be next door or in close proximity to the subject property. It is considerably larger (1062 sq. ft. vs. 780 sq. ft.) Yet sold for just $50,500. It is is similar condition. The lender's appraisal also overstates the condition of the subject property (fair rather than poor).

Any assertion by the creditor that its claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). At least one circuit court has now followed Lam. See In re Bartee, ___ F.3d ___ , 2000 W.L. 621400 (5th Cir. 2000). While this court has published a decision indicating that 11 U.S.C. § 1322(b)(2) and Nobelman v. American Savings Bank, 508 U.S. 324 (1993) operate to prevent a debtor from "stripping off" a completely under-secured home mortgage or deed of trust, Lam is to the contrary. Cf. In re Shandrew, 210 B.R. 829 (Bankr. E.D. Cal. 1997). Other recent cases following Shandrew, do not persuade the court to abandon Lam. See In re Enriquez, 244 B.R. 156 (Bankr. S.D. Cal. 2000); In re Ortiz, 241 B.R. 466 (Bankr. E.D. Cal. 1999). Whether or not it is compelled to follow Lam, the court considers Lam binding. Lam permits the "strip off" despite section 1322(b)(2) if the claim is completely under-secured.

If the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0 because the value of its collateral is $0, no interest need be paid as required by 11 U.S.C. § 1325(a)(5)(B)(ii). A review of the schedules indicates that section 1325(a)(4) does not require interest be paid on general unsecured claims.

Any argument that the plan violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991) is overruled. The plan does not constitute an objection to the claim pursuant to Fed.R.Bankr.P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and it also includes a separate motion to value the claim as permitted by Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The plan is clearly labeled as both a plan and a motion to value the collateral. The plan was served by the trustee on all creditors, and, because the plan incorporated a motion to value collateral, was again served by the debtor with a notice that the collateral for the claim would be valued at the same time the plan was confirmed. That motion is supported by a declaration of the debtor as to the value of the real property that is the debtor's principal residence. There is nothing about the plan and the motion, or the process to confirm the plan and consider the motion, which amounts to a denial of due process.

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. Evidence in the form of the debtors' declaration

supports the motion. The debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

To the extent the creditor objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed.R.Bankr.P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed.R.Bankr.P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed.R.Bankr.P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. Once completed, if the creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. Alternatively, the court would entertain a declaratory relief action prior to discharge in order to establish that, upon completion of the plan and discharge, the debtor would be entitled to a reconveyance of the deed of trust.

In the meantime, the court is merely valuing collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing what the claims are likely to be is vital to assessing the feasibility of a plan and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

In In re Laskin, 222 B.R. 872 (B.A.P. 9th Cir. 1998), the court recognized a distinction between chapter 7 and chapter 13 cases. In the former, an attempt to strip off a lien requires a complaint to determine validity, priority, or extent of the subject lien. But in a chapter 13 case lien stripping is intertwined with the claims allowance and confirmation processes. ". . . [Section] 1322(b)(2), . . . provides a Chapter 13 plan may 'modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ,' and . . . 'secured' in § 1322(b)(2) is defined by reference to § 506(a) (providing for bifurcation of a claim into secured and unsecured portions) . . . ." Section 1325(a)(5)(B)(ii) also "requires the determination of secured claims in the confirmation of Chapter 13 plans. There are no equivalent provisions in Chapter 7. . . ." Laskin, 222 B.R. at 875. Neither confirmation of a plan, valuation under section 506(a), nor a claim objection necessarily require an adversary proceeding. Fed.R.Bankr.P. 3007.

Nor is the court finding that the "in rem" liability of the property serving as collateral is discharged by this ruling as the objecting creditor asserts in its objection. The only discharge the debtor will receive will come at the conclusion of the case after all payments are paid and all claims provided for by the plan are satisfied.

Nor is there any necessity that the creditor first file a proof of claim. The court is not considering an objection to a claim. There is no need to wait to value the debtor's assets. Knowing the value of the assets, including the

subject property, is necessary to determine if the plan complies with 11 U.S.C. § 1325(a)(5) and to determine whether the-best-interests-of-creditors test of 11 U.S.C. § 1325(a)(4) has been satisfied.

To the extent the creditor asserts the valuation should be delayed to some point other than the effective date of the plan, this assertion is without merit. The logical time to value collateral and other assets is at confirmation or the effective date of the plan (which are usually, in the chapter 13 context, at approximately the same time). Would it make any sense to value a car at the end of the case? It would not. It makes no more sense to value the house at the end of the case or any other time after confirmation.

Courts have valued collateral as of the petition date, the confirmation date, the effective date of a plan, the confirmation hearing date, the filing date of the plan, the date of the motion to value collateral, and the date of sale. In re Wood, 190 B.R. 788, 790-792 (Bankr. M.D. Pa. 1996) (cases collected); Patrick Fitzgerald, "Bankruptcy Code Section 506(a) and Undersecured Creditors: What Date Valuation?" 34 UCLA L.Rev. 1953 (1987). Most courts conclude that collateral should be valued at the time of confirmation or at the plan's effective date. See e.g., In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995). This court agrees with the bankruptcy court's analysis in Kennedy -- as a general proposition, valuation of a creditor's collateral and the fixing of its secured claim is done at the time of confirmation. In re Kennedy, 177 B.R. at 971-973.

The "preservation and maintenance" clause of the deed of trust is not triggered by this ruling. That clause requires the debtor to keep the subject property free of liens and encumbrances that threaten the priority of the objecting creditor's lien and to keep the property in good repair.

19. 00-92128-A-13 DEAN R. GIANOTTI
RLE #1

HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY FORD MOTOR CREDIT COMPANY
7/17/00 [13]

Tentative Ruling: The objection is sustained. The motion includes the declaration of the debtor testifying that the subject vehicle has a value of $11,460.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148(1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). The creditor argues that the court should value the truck at the high blue book value plus the cost of the service contract, a total of $19,974.00. The court disagrees that the cost

of the service contract is part of the value of the truck, particularly when the debtor has rejected the service contract. Therefore, the creditor's proposed value is $18,475.00. If adopted by the court, the claim, $15,896.56, is completely secured. While the court is not prepared to value the truck at $18,475.00, it does conclude that the debtor has not satisfied his burden of proof that the vehicle has a value of $11,460.00. The discrepancy between this value and the Blue Book value suggests the debtor's opinion is not accurate. Therefore, the valuation motion is denied and the objection to confirmation is sustained. The plan does not satisfy 11 U.S.C. § 1325(a)(5).

The objection to the interest rate is also sustained. The plan pays 10%. The debtor has failed to produce any evidence that his plan will pay the present value of the secured portion of the creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that they pay a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtor has come forward with no evidence, as was his burden, which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506.

20. 00-92031-A-13 HARRY & GAIL GRUNDMANN
CD #1

HEARING ON OBJECTION TO CONFIRMATION OF PLAN FILED BY BANKERS TRUST COMPANY OF CALIFORNIA 7/26/00 [15]

Tentative Ruling: The objection is sustained. The plan substantially underestimates the objecting creditor's secured claim. At the amount claimed, the plan will not be completed within its 45-month term. The plan is not feasible particularly when one considers the failure of the plan to provide for the priority tax claims referred to below.

21. 00-92031-A-13 HARRY & GAIL GRUNDMANN
IRS #1

HEARING ON OBJECTION TO DEBTORS' CHAPTER 13 PLAN FILED BY THE INTERNAL REVENUE SERVICE
7/17/00 [11]

Tentative Ruling: The objection is sustained. The plan fails to provide for payment in full of the priority claim of the IRS and FTB as required by 11 U.S.C. § 1322(a)(2). The plan merely states that any claims will be paid directly by the debtor. All pre-petition debts that are payable during the term of the plan must be paid through the chapter 13 plan. This means the $350 loan payment deducted from the debtor's paycheck must cease. In re Fulkrod, 973 F.2d 801 (9th Cir. 1992) (all payments to creditors, other than long term debt not modified by the plan, must be through the trustee).

Further, the debtors have not filed income tax returns for 1997, 1998, and 1999. Since taxes are self assessed, there is no way to accurately determine if the debtors have a tax liability that precludes confirmation of a feasible plan. Because the debtors have the burden of establishing that their plan is feasible but have not filed their returns or other evidence proving feasibility, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(6).

22. 00-92131-A-13 DARRELL & JANET BILLINGS
FW #1

CONT. HEARING ON MOTION TO USE CASH COLLATERAL
6/12/00 [6]

Tentative Ruling: None. Appearances are required.

23. 99-92339-A-13 STEVE & SHERRY MINGUS
ALC #3

HEARING ON MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION
7/12/00 [23]

Tentative Ruling: The motion is denied and the objection is sustained. The debtors have provided no explanation for the need to reduce the monthly plan payment from $1,050 to $625 per month. Nor have they filed amended Schedules I and J (the unsworn and unfiled Schedules attached to the declaration from counsel are rank hearsay). Therefore, it is impossible to determine if there is good cause for the amendment or whether the amendment will pay all of the disposable income to creditors. Secondly, the plan fails to provide for the secured claims of Litton and the tax collector.

24. 99-95643-A-13 EDWARD & KERRY DARNELL
FW #1

HEARING ON MOTION TO INCUR DEBT
7/21/00 [39]

Tentative Ruling: The motion is denied. If the debtors were to include an expense on Schedule J for the college expenses of an adult child, the court would sustain an objection based on the failure of the debtors to contribute all of their disposable income to their plan. College expenses are not reasonably necessary for the support of the debtor. In re Gillead, 171 B.R. 886, 890 (Bankr. E.D. Cal. 1994). Such expenses cannot be justified. A debtor cannot divert funds from creditors to her or his children's education. "A debtor does not have the right to force his creditors to donate to his

children's education." In re Goodson, 130 B.R. 897 (Bankr. N.D. Okla. 1991) as quoted in In re Attanasio 218 B.R. 180, 231 (Bankr. N.D. Ala. 1998). The result is no different if the debtors attempt to contribute to the college education of an adult child by incurring debt.

25. 98-94145-A-13 REX MCBRIDE
FW #1

HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN
7/21/00 [51]

Tentative Ruling: The motion is denied and the objection is sustained. The debtor has failed to explain the numerous failures to make monthly plan payments. Without this information, there is no way to determine if the problems causing these defaults have abated.

26. 99-92646-A-13 ANTONINO JAMES AGBAYANI, JR.
FW #2 TONIA DOLORES AGBAYANI

CONT. HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
6/21/00 [33]

Tentative Ruling: The motion is denied and the objection is sustained. First, the plan fails to provide for payment in full of the IRS' priority claim. 11 U.S.C. § 1322(a)(2). Second, the plan fails to provide for the secured claim of Sears as required by 11 U.S.C. § 1325(a)(5). Third, the plan fails to pay the present value of the secured claims of FTB and AEA because no interest will be paid on their secured claims as required by 11 U.S.C. § 1325(a)(5)(B)(ii). Fourth, with the foregoing unprovided for claims included in the plan, the plan payment must be $2,259.95. Schedules I and J reveal that the debtors do not have the ability to make such a plan payment.

27. 00-92157-A-13 GREGORY L. JACOBS
SPS #1

HEARING ON OBJECTIONS TO CONFIRMATION OF PLAN AND OPPOSITION TO MOTION TO VALUE COLLATERAL FILED BY FIRESIDE THRIFT COMPANY
7/10/00 [11]

Tentative Ruling: The objections are sustained in part. The objection to the plan term is overruled. The debtor's income, monthly expenses, and other secured claims do not permit payment over a shorter period. In this circumstance, courts have found cause to go beyond 36 months in order for the debtor to manage priority claims or arrears on home mortgages. See e.g., In re Masterson, 147 B.R. 295 (Bankr. D. N.H. 1992); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986); Philadelphia Sav. Fund Soc'y. v. Stewart, 16 B.R. 460 (E.D. Pa. 1981). In short, cause is measured by the benefit to and need of the debtor. In re Coburn, 175 B.R. 400, 402 (Bankr. D. Ore. 1994). Further, the plan provides for the payment of interest on the pre-petition arrears further eliminating any prejudice caused by the term of the plan. The plan complies with 11 U.S.C. §§ 1322(b)(5) and 1322(d).

Second, the objection to the valuation motion is overruled. The motion includes the declaration of the debtor testifying that the subject vehicle has a value of $8,500. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The additional evidence filed by the creditor is not persuasive. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning.").

The Supreme Court in Rash also rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach suggested by the creditor. The mechanical use of the value midpoint between high/retail and low/wholesale is not appropriate. Id. at 159-160. This is the same approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash.

The debtors have presented competent evidence regarding replacement value that takes into account the condition of the vehicle. Therefore, the motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $8,500 on the date of the petition. $8,500 of its claim is an allowed secured claim. When paid $8,500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

Because the valuation motion is approved, the objection that the plan does not comply with 11 U.S.C. § 1325(a)(5) because it fails to pay the secured claim of the creditor as it has claimed it is overruled. However, the objection to the interest rate is sustained. The plan pays 10%. The debtors have failed to produce any evidence that their plan will pay the present value of the secured portion of the objecting creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that they pay a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtors have come forward with no evidence, as was their burden, which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506.

In the absence of contrary evidence, the contract rate of interest is presumptively the interest rate that must be paid to a secured creditor in connection with a chapter 13 plan. Accord Smithwick v. Greentree Financial (In re Smithwick), 121 F.3d 211 (5th Cir. 1997), *rehearing denied*, 132 F.3d 1458 (5th Cir. 1997), *cert. denied*, 523 U.S. 1074 (1998). If the contract rate is too low, such must be proven by the creditor. If the contract rate is too high,

such must be proven by the debtor. Because the contract rate is not paid and because the debtor has not rebutted the presumption, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B)(ii).

28. 00-92166-A-13 JOHN & VERA ALVARADO
SW #1

HEARING ON OBJECTION TO CHAPTER 13 PLAN AND MOTION TO VALUE COLLATERAL FILED BY WELLS FARGO FINANCIAL ACCEPTANCE 7/13/00 [10]

Tentative Ruling: The objections are sustained in part. The objection to the valuation motion is overruled. The motion includes the declaration of the debtor testifying that the subject vehicle has a value of $8,500. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The additional evidence filed by the creditor is not persuasive. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148(1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning.").

The debtors have presented competent evidence regarding replacement value that takes into account the condition of the vehicle. Therefore, the motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $8,500 on the date of the petition. $8,500 of its claim is an allowed secured claim. When paid $8,500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

Because the valuation motion is approved, the objection that the plan does not comply with 11 U.S.C. § 1325(a)(5) because it fails to pay the secured claim of the creditor as it has claimed it is overruled. However, the objection to the interest rate is sustained. The plan pays 10%. The debtors have failed to produce any evidence that their plan will pay the present value of the secured portion of the objecting creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that they pay a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtors have come forward with no evidence, as was their burden, which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506.

In the absence of contrary evidence, the contract rate of interest is

presumptively the interest rate that must be paid to a secured creditor in connection with a chapter 13 plan. Accord Smithwick v. Greentree Financial (In re Smithwick), 121 F.3d 211 (5th Cir. 1997), *rehearing denied*, 132 F.3d 1458 (5th Cir. 1997), *cert. denied*, 523 U.S. 1074 (1998). If the contract rate is too low, such must be proven by the creditor. If the contract rate is too high, such must be proven by the debtor. Because the contract rate is not paid and because the debtor has not rebutted the presumption, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B)(ii).

29. 00-91870-A-13 FRANK & NANCY MARTINS
SW #1

HEARING ON OBJECTION TO DEBTORS' CHAPTER 13 PLAN AND OBJECTION TO DEBTORS' MOTION TO VALUE COLLATERAL FILED BY GMAC 7/19/00 [17]

Tentative Ruling: The objection is sustained in part. The motion includes the declaration of the debtor testifying that the subject vehicle has a value of $11,000.00. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148(1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). The creditor argues that the court should value the vehicle at the mid blue book value, $15,655.00.

The Supreme Court in Rash also rejected valuations that were based on the midpoint between the wholesale and retail value or a "split-the-difference" approach suggested by the creditor. The mechanical use of the value midpoint between high/retail and low/wholesale is not appropriate. Id. at 159-160. This is the same approach to valuation adopted in Matter of Hoskins, 102 F.3d 311 (7th Cir. 1996) but rejected in Rash.

While the court is not prepared to value the vehicle at $15,655, it does conclude that the debtor has not satisfied his burden of proof that the vehicle has a value of $11,000.00. The discrepancy between this value and the Blue Book values suggests the debtor's opinion is not accurate. Therefore, the valuation motion is denied and the objection to confirmation is sustained. The plan does not satisfy 11 U.S.C. § 1325(a)(5).

The objection to the interest rate is overruled. The plan pays the creditor the contract rate of interest, 4.9%. The creditor demands 10%. In the absence of contrary evidence, the contract rate of interest is presumptively the interest rate that must be paid to a secured creditor in connection with a chapter 13 plan. Accord Smithwick v. Greentree Financial (In re Smithwick),

121 F.3d 211 (5th Cir. 1997), *rehearing denied*, 132 F.3d 1458 (5th Cir. 1997), *cert. denied*, 523 U.S. 1074 (1998). If the contract rate is too low, such must be proven by the creditor. If the contract rate is too high, such must be proven by the debtor. Because the contract rate is being paid and because the creditor has not rebutted the presumption, the plan cannot be confirmed consistent with 11 U.S.C. § 1325(a)(5)(B)(ii). There is no evidence to establish that 10% is more appropriate as asserted by the creditor.

30. 99-93074-A-13 QUEEN A. BROWN
FW #1

HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN (OST) 7/27/00 [60]

Tentative Ruling: The motion is denied and the objections are sustained in part. First, the plan is not feasible. To be completed within its term, the plan payment must be $692 for the remainder of the plan. Schedules I and J do not indicate that the debtor can afford this higher monthly payment.

The objection that the plan impermissibly attempts to cure a post-petition default on a home mortgage debt is overruled. A plan may be modified to cure such a post-petition default. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995); Green Tree Acceptance v. Hoggle (In re Hoggle), 12 F.3d 1008, 1010-11 (11th Cir. 1994); Mendoza v. Temple Inland Mortgage (In re Mendoza), 111 F.3d 1264, 1268 (5th Cir. 1997). This is clear from 11 U.S.C. § 1322(b)(3) which permits the cure of "any" default. It is also clear from 11 U.S.C. § 1322(b)(5) which permit the cure of "any" default under the terms of home mortgage that matures after plan is scheduled to be completed. And it is clear from 11 U.S.C. § 1322(c)(1) which permits the cure of a default on a home mortgage until the encumbered property is sold at a foreclosure sale.

The creditor's attempt to circumvent this authority by claiming that the post petition arrearage is new credit that the court has not approved as required by the confirmed plan is unpersuasive. The debt was owed to the creditor before the case was filed. It was simply unmatured. It has now matured and not been paid. The above authority recognizes that this default on such debt may be cured through the plan.

The objection that 11 U.S.C. § 1329(a) does not permit such an amendment is also overruled. The amendment increases the amount of payments on claims of a particular class. 11 U.S.C. § 1329(a)(2). It also reduces the time for payment of other claims given the increase in secured debt to be paid through the plan. Further, 11 U.S.C. § 1329(b)(1) specifies that 11 U.S.C. § 1322(b) is applicable to any post confirmation modification. As pointed out above, sections 1322(b)(3), (b)(5), and (c) permits any default to be cured through a plan.

The entitlement to interest on arrears is dependent on whether the mortgage debt was incurred prior to October 22, 1994. If it was, the arrears are entitled to accrue interest. If the loan was made after this date, interest on arrears is due only if the loan provides for such interest. 11 U.S.C. § 1322(e). The objecting creditor has included none of this information in the objection. It is impossible to determine from the objection whether the objection has merit. It is overruled.

The objection that the post-petition arrearage is not included within Class 2

is sustained. It is not enough to mention this arrearage in Class 1 as is specifically mentioned in the text of the plan. However, this is a minor problem that can easily be rectified if the other sustained objections are overcome.

31. 00-91776-A-13 WILLIAM B. TEGTMEIER
AAS #1

HEARING ON OBJECTION TO CHAPTER 13 PLAN FILED BY BANK OF STOCKTON 7/12/00 [23]

Tentative Ruling: The objections are sustained in part. The secured claim of the objecting creditor is classified in Class 2. Therefore, it will be paid in full and with interest during the term of the plan. It retains its security. The claim (actually, it has four claims that the debtor has combined into one claim because all are secured by the same property) will be modified – the interest rate is fixed at 10%.

The objection that the plan incorrectly states the claim amount is overruled. The plan provides that, absent a claim objection or valuation motion, the claim will be paid the amount demanded in the proof of claim. The plan states: "The proof of claim filed by or on behalf of a creditor, not the plan or the schedules, will determine the amount and character of the creditor's claim. If a creditor's claim is provided for by this plan and a proof of claim is filed, dividends will be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim. Secured claims not listed within Classes 1, 2, 3, or 4, and priority claims not listed within Class 5 are not provided for by the plan." This claim is provided for in Class 2.

For the same reason, the objection that the plan fails to provide for interest, attorneys' fees, costs and other charges is overruled. To the extent these charges were incurred pre-petition, if they are included in a proof of claim they will be paid.

As for post-petition interest, the plan provides for the payment of such interest from the date of the petition. The plan provides: "Debtor hereby proposes the following Chapter 13 Plan effective from the date of the petition." The claim's treatment under Class 2 provides 10%.

As to post-petition attorneys' fees and other charges, nothing in the plan bars their award provided the requirements of 11 U.S.C. § 506(b) are met. That is, if the claimant has an over-secured and allowed secured claim, it may accrue and be paid these additional charges.

The objection to the rate of interest, however, is sustained. The plan proposes a fixed 10% rate. Three of the notes signed by the debtor provides for a variable rate of interest, now 9.5%. The fourth provides 12.5% interest. All notes have penalty rates.

Since these notes are not home mortgage loans that cannot be modified pursuant to 11 U.S.C. § 1322(b)(2), the debtor is able to modify the interest rates. However, given the objection, it is incumbent on the debtor to produce evidence that the plan will pay the present value of the secured portion of the creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that the plan provide a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re

Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtor has come forward with no evidence which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506.

32. 00-91778-A-13 ELLEN LUNSFORD
AAS #1

HEARING ON OBJECTION TO CHAPTER 13 PLAN FILED BY BANK OF STOCKTON 7/12/00 [22]

Tentative Ruling: The objections are sustained in part. The secured claim of the objecting creditor is classified in Class 2. Therefore, it will be paid in full and with interest during the term of the plan. It retains its security. The claim (actually, it has four claims that the debtor has combined into one claim because all are secured by the same property) will be modified – the interest rate is fixed at 10%.

The objection that the plan incorrectly states the claim amount is overruled. The plan provides that, absent a claim objection or valuation motion, the claim will be paid the amount demanded in the proof of claim. The plan states: "The proof of claim filed by or on behalf of a creditor, not the plan or the schedules, will determine the amount and character of the creditor's claim. If a creditor's claim is provided for by this plan and a proof of claim is filed, dividends will be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim. Secured claims not listed within Classes 1, 2, 3, or 4, and priority claims not listed within Class 5 are not provided for by the plan." This claim is provided for in Class 2.

For the same reason, the objection that the plan fails to provide for interest, attorneys' fees, costs and other charges is overruled. To the extent these charges were incurred pre-petition, if they are included in a proof of claim they will be paid.

As for post-petition interest, the plan provides for the payment of such interest from the date of the petition. The plan provides: "Debtor hereby proposes the following Chapter 13 Plan effective from the date of the petition." The claim's treatment under Class 2 provides 10%.

As to post-petition attorneys' fees and other charges, nothing in the plan bars their award provided the requirements of 11 U.S.C. § 506(b) are met. That is, if the claimant has an over-secured and allowed secured claim, it may accrue and be paid these additional charges.

The objection to the rate of interest, however, is sustained. The plan proposes a fixed 10% rate. Three of the notes signed by the debtor provides for a variable rate of interest, now 9.5%. The fourth provides 12.5% interest. All notes have penalty rates.

Since these notes are not home mortgage loans that cannot be modified pursuant to 11 U.S.C. § 1322(b)(2), the debtor is able to modify the interest rates. However, given the objection, it is incumbent on the debtor to produce evidence that the plan will pay the present value of the secured portion of the

creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii). This requires that the plan provide a market rate of interest. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987). The debtor has come forward with no evidence which permits the court to determine whether 10% is a market rate of interest. It is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." El Camino Real, 818 F.2d at 1506.

33. 00-91484-A-13 JAMES & SANDRA SCHAFFNER
ALC #1

HEARING ON MOTION TO CONFIRM FIRST AMENDED CHAPTER 13 PLAN
7/20/00 [15]

Tentative Ruling: The motion is granted and the objection is overruled. The county objects because its claim will not be paid in full. It claim is for support assigned to the county by a dependent of the debtor. It appears this was assigned because the county is providing public assistance to the dependent. Such a claim is not entitled to priority status. 11 U.S.C. § 507(a)(7) accords priority to support claims only if they are not assigned, whether voluntarily or by operation of law. The objection admits that the support claim was assigned to the county.

Admittedly, however, the claim for the assigned support is nonetheless nondischargeable in bankruptcy. 11 U.S.C. §§ 523(a)(5) and 1328(a). There is nothing in the plan suggesting that it will be discharged in contravention of section 1328(a).

Second, because a claim is nondischargeable does not mean that it must be paid in a chapter 13 case. 11 U.S.C. § 1322(a)(2) requires only that unsecured priority claims be paid in full.

Third, if the claim is a general unsecured that is nondischargeable, the claim may accrue interest that is also nondischargeable. However, that interest cannot be paid by the chapter 13 plan unless required by 11 U.S.C. § 1325(a)(4). 11 U.S.C. § 502(a)(2) bars payment of interest on unsecured claims that has not matured prior to the petition. However, just as a support claim is nondischargeable and will survive the chapter 13 discharge, 11 U.S.C. § 1328(a), the accruing interest is likewise nondischargeable. See Bruning v. United States, 376 U.S. 358, 360 (1964); In re Pardee, 193 F.3d 1083, 1085, n. 4 (9th Cir. 1999).

Fourth, if the debtor were to attempt to pay the county's claim in full without paying other unsecured claims in full, the plan would not be confirmed because it would be unfairly discriminating among general unsecured claims. The plan proposes to pay nothing to unsecured claims. Section 1322(b)(1) permits a chapter 13 plan to separately classify an unsecured claim with the proviso that the plan may not "unfairly" discriminate in favor of any claim so classified. The discrimination here is unfair. Were the court to permit it, then "nondischargeable" would be equated with "priority." Lawson v. Lackey (In re Lackey), 148 B.R. 626 (Bankr. N.D. Ala. 1992). Further, there is nothing fair, measured from the perspective of the other general unsecured claim holders, about getting paid nothing or very little when another general unsecured claim holder is receiving payment in full. In re Warner, 115 B.R. 233 (Bankr. C.D. Cal. 1989); Groves v. La Barge (In re Groves), 39 F.3d 212, 215-16 (8th Cir.

1994); McDonald v. Sperna (In re Sperna), 173 B.R. 654, 658-60 (B.A.P. 9th Cir. 1994).

Fifth, the argument that the plan is proposed in bad faith is also overruled. This assertion is based on nothing more than the fact that a 0% dividend will be paid to general unsecured creditors and the fact that the claim is nondischargeable. A review of Schedules I and J reveals that the debtors does not have additional disposable income to contribute to the plan. The remainder of the schedules do not indicate that the debtors have unencumbered and unexempted assets that cause the plan to fail the bests-interests-of-creditors test. The plan is nearly the maximum 60-month duration – it is 57 months. Further, unlike most creditors who raise the bad faith objection, this creditor's claim will survive the chapter 13 discharge. 11 U.S.C. § 1328(a). This is not a case where the debtor is paying nothing to an unsecured creditor whose claim would not be dischargeable in a chapter 7 but can be discharged by a chapter 13 "super-discharge. Given the totality of the circumstances, the court finds that the plan has been proposed in good faith. In re Warren, 89 B.R. 87, 93-94 (B.A.P. 9th Cir. 1988); In re Padilla, 213 B.R. 349, 352-53 (B.A.P. 9th Cir. 1997).

34. 99-93788-A-13 DAVID & KIMBERLY HICKS
FW #5

CONT. HEARING ON MOTION TO VALUE COLLATERAL OF FIRSTPLUS FINANCIAL SERVICES
5/17/00 [38]

Tentative Ruling: The subject property has a value of $95,000 and is encumbered by a first deed of trust. The first deed of trust holder is owed, according to its proof of claim filed September 27, 1999, $97,526.77. Therefore, the respondent's deed of trust is completely under-collateralized. No portion of its claim is an allowed secured claim. The claim is allowed as general unsecured claim unless previously paid by the trustee as secured claim.

The court has found the appraisal of Denis Robillard to be the best indicator of value. First, the copies of the appraisals filed by the creditor are illegible and very difficult to decipher. Second, the appraisal of Timothy Long offered by the creditor is stricken. It was filed and served on August 11. The parties stipulated that the appraisal would be filed and served on August 4. Third, a comparison of the comparables in the Robillard and Nusser (to the extent they were legible) appraisals leads the court to conclude that the data gathered by Robillard is the most accurate and relevant. Even if the court disregarded all of his deductions from the comparable sales, the gross sale prices of each comparable is no more than $97,000. Robillard's comparable sales are geographically closer to the subject property. The Nusser analysis of the comparables is much more cursory and is not based on an interior inspection of the subject property.

Any assertion by the creditor that its claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). At least one circuit court has now followed Lam. See In re Bartee, ___ F.3d ___ , 2000 W.L. 621400 (5th Cir. 2000). While this court has published a decision indicating that 11 U.S.C. § 1322(b)(2) and Nobelman v. American Savings Bank, 508 U.S. 324 (1993) operate to prevent a debtor from "stripping off" a completely under-secured home mortgage or deed of trust, Lam is to the contrary. Cf. In re Shandrew, 210 B.R. 829 (Bankr. E.D. Cal. 1997). Other

recent cases following Shandrew, do not persuade the court to abandon Lam. See In re Enriquez, 244 B.R. 156 (Bankr. S.D. Cal. 2000); In re Ortiz, 241 B.R. 466 (Bankr. E.D. Cal. 1999). Whether or not it is compelled to follow Lam, the court considers Lam binding. Lam permits the "strip off" despite section 1322(b)(2) if the claim is completely under-secured.

If the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0 because the value of its collateral is $0, no interest need be paid as required by 11 U.S.C. § 1325(a)(5)(B)(ii). A review of the schedules indicates that section 1325(a)(4) does not require interest be paid on general unsecured claims.

Any argument that the plan violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991) is overruled. The plan does not constitute an objection to the claim pursuant to Fed.R.Bankr.P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and it also includes a separate motion to value the claim as permitted by Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The plan is clearly labeled as both a plan and a motion to value the collateral. The plan was served by the trustee on all creditors, and, because the plan incorporated a motion to value collateral, was again served by the debtor with a notice that the collateral for the claim would be valued at the same time the plan was confirmed. That motion is supported by a declaration of the debtor as to the value of the real property that is the debtor's principal residence. There is nothing about the plan and the motion, or the process to confirm the plan and consider the motion, which amounts to a denial of due process.

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. Evidence in the form of the debtors' declaration supports the motion. The debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

To the extent the creditor objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed.R.Bankr.P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed.R.Bankr.P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed.R.Bankr.P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. Once completed, if the creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. Alternatively, the court would entertain a declaratory relief action prior to discharge in order to establish that, upon completion of the plan and discharge, the debtor would be entitled to a reconveyance of the deed of trust.

In the meantime, the court is merely valuing collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set

the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing what the claims are likely to be is vital to assessing the feasibility of a plan and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

In In re Laskin, 222 B.R. 872 (B.A.P. 9th Cir. 1998), the court recognized a distinction between chapter 7 and chapter 13 cases. In the former, an attempt to strip off a lien requires a complaint to determine validity, priority, or extent of the subject lien. But in a chapter 13 case lien stripping is intertwined with the claims allowance and confirmation processes. ". . . [Section] 1322(b)(2), . . . provides a Chapter 13 plan may 'modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ,' and . . . 'secured' in § 1322(b)(2) is defined by reference to § 506(a) (providing for bifurcation of a claim into secured and unsecured portions) . . . ." Section 1325(a)(5)(B)(ii) also "requires the determination of secured claims in the confirmation of Chapter 13 plans. There are no equivalent provisions in Chapter 7. . . ." Laskin, 222 B.R. at 875. Neither confirmation of a plan, valuation under section 506(a), nor a claim objection necessarily require an adversary proceeding. Fed.R.Bankr.P. 3007.

Nor is the court finding that the "in rem" liability of the property serving as collateral is discharged by this ruling as the objecting creditor asserts in its objection. The only discharge the debtor will receive will come at the conclusion of the case after all payments are paid and all claims provided for by the plan are satisfied.

Nor is there any necessity that the creditor first file a proof of claim. The court is not considering an objection to a claim. There is no need to wait to value the debtor's assets. Knowing the value of the assets, including the subject property, is necessary to determine if the plan complies with 11 U.S.C. § 1325(a)(5) and to determine whether the-best-interests-of-creditors test of 11 U.S.C. § 1325(a)(4) has been satisfied.

To the extent the creditor asserts the valuation should be delayed to some point other than the effective date of the plan, this assertion is without merit. The logical time to value collateral and other assets is at confirmation or the effective date of the plan (which are usually, in the chapter 13 context, at approximately the same time). Would it make any sense to value a car at the end of the case? It would not. It makes no more sense to value the house at the end of the case or any other time after confirmation.

Courts have valued collateral as of the petition date, the confirmation date, the effective date of a plan, the confirmation hearing date, the filing date of the plan, the date of the motion to value collateral, and the date of sale. In re Wood, 190 B.R. 788, 790-792 (Bankr. M.D. Pa. 1996) (cases collected); Patrick Fitzgerald, "Bankruptcy Code Section 506(a) and Undersecured Creditors: What Date Valuation?" 34 UCLA L.Rev. 1953 (1987). Most courts conclude that collateral should be valued at the time of confirmation or at the plan's effective date. See e.g., In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995). This court agrees with the bankruptcy court's analysis in Kennedy -- as a general proposition, valuation of a creditor's collateral and the fixing of its secured claim is done at the time of confirmation. In re Kennedy, 177 B.R. at 971-973.

The "preservation and maintenance" clause of the deed of trust is not triggered by this ruling. That clause requires the debtor to keep the subject property free of liens and encumbrances that threaten the priority of the objecting creditor's lien and to keep the property in good repair.

35. 00-92097-A-13 FRANK & MARY AVILA
KR #1

HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY ANTHONY & MARY SOUZA 7/25/00 [18]

Tentative Ruling: The objections are sustained in part. The court agrees that the debtors may not pay directly to an attorneys' fees due for litigation in the state court. These fees must first be approved by the court and paid as an administrative expense. However, the creditor must understand that this may work to the disadvantage of creditors. Once the fees are approved, they are administrative expense that must be paid in full before any distribution to other pre-petition creditors. In re Tenney, 63 B.R. 110, 111 (Bankr. W.D. Okla. 1986); Shorb v. Bishop (In re Shorb), 101 B.R. 185, 186-87 (B.A.P. 9th Cir. 1989); In re Hallmark, 225 B.R. 192, 194 (Bankr. C.D. Cal. 1998). Given the attorney's willingness to be paid in $200 a month up to a maximum $4,000, the objecting creditor may wish to carefully reconsider the objection. It will be sustained unless the creditor elects to accept the plan on this point. If the creditor reconsiders, the court will require the debtor to pay into the plan for distribution to creditors any amounts not paid to the attorney. It will also require that the $200 be paid into the plan when the attorney is paid in full.

Second, the court will modify the stay to permit the state court action to go forward so that the objecting creditor's claim can be liquidated. Once liquidated, its proof of claim should be amended.

Third, as to the objection regarding the vehicle lease, the objection is overruled. Once the vehicle lease ends, the debtors will need to replace the vehicle. They are likely to have a comparable expense. Therefore, an amount equivalent to the vehicle lease need not be contributed to the plan once the lease expires. If it should develop that the replacement cost is less than anticipated and the debtors are able to increase the plan payment, 11 U.S.C. § 1329(a) permits the trustee and unsecured creditors to move to modify the plan to increase the plan payment.

Fourth, the objection that the plan has been proposed in bad faith is overruled on condition that the plan is amended as required above. The requirement that a plan be proposed in good faith is at issue whenever a debtor proposes to pay a nominal or no dividend on a claim which would not be discharged in a chapter 7 case. In re Warren, 89 B.R. 87, 93-94 (B.A.P. 9th Cir. 1988); In re Padilla, 213 B.R. 349, 352-53 (B.A.P. 9th Cir. 1997). Whether such a plan is a fair use of chapter 13 or is a disguised chapter 7 which evades the discharge restrictions of 11 U.S.C. § 523(a) is determined by reviewing the "totality of the circumstances." Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir. 1982).

It is well established that a nominal or no dividend to creditors is not necessarily bad faith. In re Goeb, 675 F.2d at 1389-90; In re Warren, 89 B.R. at 92. But, as emphasized by the court in Goeb, "bankruptcy courts cannot

substitute a glance at the amount to be paid under the plan for review of the totality of circumstances." In re Goeb, 675 F.2d at 1391; In re Warren, 89 B.R. at 92.

Courts examining the "totality of the circumstances" look at such factors as:

1. The amount of the proposed payments and the amount of the debtor's surplus;
2. The debtor's employment history, ability to earn, and likelihood of future increases in income;
3. The probable or expected duration of the plan;
4. The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
5. The extent of preferential treatment between classes of creditors;
6. The extent to which secured claims are modified;
7. The type of debt sought to be discharged, and whether any such debt is nondischargeable in chapter 7;
8. The existence of special circumstances such as inordinate medical expenses;
9. The frequency with which debtor has sought relief under the Bankruptcy Code;
10. The motivation and sincerity of the debtor in seeking chapter 13 relief; and
11. The burden which the plan's administration would place upon the trustee.

The debtors have proposed a plan of the maximum duration despite their advanced ages. They have minimal income and do not have the prospect of any significant increase in income. The debtors are surrendering a luxury item that is encumbered by a secured claim. The creditor’s claim is disputed, but despite the dispute the debtors repaid $18,000 prior to the filing of the petition. The debtors estimate the remaining debt is $32,000. With this claim amount, the plan promises a 34% dividend. However, if the claim is allowed in a greater amount, this dividend will likely be decreased. The only circumstance suggesting bad faith is the fact that the claim of the objecting creditor may be nondischargeable in a chapter 7. This alone is not enough for the court to conclude the plan has been proposed in bad faith.

36. 00-92425-A-13 JOSE & LISA RODRIGUEZ — HEARING ON OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION FILED BY CHASE MANHATTAN MORTGAGE CORPORATION 7/27/00 [9]

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules.

The objections are overruled. First, the plan length, 40 months, is necessary. The debtors’ income, monthly expenses, and other secured claims do not permit payment over a shorter period. In this circumstance, courts have found cause to go beyond 36 months in order for the debtor to manage priority claims or arrears on home mortgages. See e.g., In re Masterson, 147 B.R. 295 (Bankr. D. N.H. 1992); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986); Philadelphia Sav. Fund Soc’y. v. Stewart, 16 B.R. 460 (E.D. Pa. 1981). In short, cause is

measured by the benefit to and need of the debtors. In re Coburn, 175 B.R. 400, 402 (Bankr. D. Ore. 1994). Further, the plan provides for the payment of interest on the pre-petition arrears further eliminating any prejudice caused by the term of the plan.

Second, there is a bona fide dispute regarding the amount of the pre-petition arrears. Because the confirmation of the plan has no impact on the amount of the claim, the court will permit the claims objection process outlined in General Order 00-02 to play out. That order sets a deadline for objecting to claims. If the claim is as stated by the creditor, it will be incumbent on them to amend the plan on pain of dismissal.

Third, the debtors have explained the reason for the default of the plan confirmed in their first case. The difficulty was due to Mr. Rodriquez' illness and absence from work. He is back at work. Further, the debtors are surrendering a vehicle to the creditor secured by it to maximize their chances of saving their home. The plan has been filed in good faith. 11 U.S.C. § 1325(a)(3).

37. 00-92425-A-13 JOSE & LISA RODRIGUEZ
SPS #1
CHASE MANHATTAN MORTGAGE
CORPORATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
7/27/00 [11]

Tentative Ruling: The motion is denied. The court incorporates the findings in its ruling on the movant's objections to confirmation. The debtors are not in default of their proposed plan. While there is no equity, the movant's collateral, the debtors' home, is necessary to their personal financial reorganization.

38. 00-92061-A-13 CARIDAD O. JAZMIN

HEARING ON OBJECTIONS
TO PROPOSED CHAPTER 13 PLAN
AND CONFIRMATION FILED BY
PRINCIPAL RESIDENTIAL
MORTGAGE, INC.
7/24/00 [10]

Tentative Ruling: No telephonic appearance is permitted to counsel for the party placing this matter on calendar because it did not include a motion control number as required by the local rules. The objection is overruled. First, as to the plan term, the objection is overruled. The debtor's income, monthly expenses, and other secured claims do not permit payment over a shorter period. In this circumstance, courts have found cause to go beyond 36 months in order for the debtor to manage priority claims or arrears on home mortgages. See e.g., In re Masterson, 147 B.R. 295 (Bankr. D. N.H. 1992); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986); Philadelphia Sav. Fund Soc'y. v. Stewart, 16 B.R. 460 (E.D. Pa. 1981). In short, cause is measured by the benefit to and need of the debtor. In re Coburn, 175 B.R. 400, 402 (Bankr. D. Ore. 1994). Further, the plan provides for the payment of interest on the pre-petition arrears further eliminating any prejudice caused by the term of the plan. The plan complies with 11 U.S.C. §§ 1322(b)(5) and 1322(d).

Second, there is a bona fide dispute regarding the amount of the pre-petition arrears. Because the confirmation of the plan has no impact on the amount of the claim, the court will permit the claims objection process outlined in

General Order 00-02 to play out. That order sets a deadline for objecting to claims. If the claim is as stated by the creditor, it will be incumbent on them to amend the plan on pain of dismissal. Because the plan term is not yet the maximum 60 months, there is room to amend the plan to provide for the claim if it is as claimed by the creditor.

MATTERS REMOVED FROM CALENDAR FOR RESOLUTION WITHOUT ORAL ARGUMENT BEGIN HERE. IN THESE MATTERS, THE RESPONDENT TYPICALLY FAILED TO FILE WRITTEN OPPOSITION AS REQUIRED BY LOCAL RULES 4001-1 AND/OR 9014-1 OR A PRIOR COURT ORDER. GIVEN THE LACK OF WRITTEN OPPOSITION, OR FOR THE OTHER REASONS GIVEN IN THE RULING, THESE MATTERS ARE SUITABLE FOR DISPOSITION WITHOUT HEARING. IF THE MOVANT/OBJECTING PARTY AND RESPONDENT HAVE AGREED TO A CONTINUANCE OR TO A STIPULATION, NOTIFY THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED. IF YOU DO NOT NOTIFY THE COURTROOM DEPUTY CLERK, INCLUDE A PROVISION VACATING THE FINAL RULING IN YOUR STIPULATION OR ORDER.

39. 99-90323-A-13 JAMES & OLGA DERBY
CWN #1
GE CAPITAL MORTGAGE SERVICES, INC. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/25/00 [30]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two post-petition installments. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

40. 00-90927-A-13 TIMOTHY L. KING
CK #1
DEERE CREDIT, INC. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/13/00 [13]

Final Ruling: The parties have resolved this matter by stipulation. The parties shall submit a written stipulation together with an appropriate order.

41. 00-90528-A-13 ERIC WAYNE RENSHAW
AC #1
CALIFORNIA HOUSING FINANCE AGENCY VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
PART II
7/18/00 [30]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and

all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay five post-petition installments. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

42. 99-94828-A-13 ERIC RENA HOUSTON
EGS #1
AURORA LOAN SERVICES, INC. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/24/00 [33]

Final Ruling: The parties have resolved this matter by stipulation. The parties shall submit a written stipulation together with an appropriate order.

43. 99-95429-A-13 MICHAEL STEVEN MCCORMACK
EAV #2
SECURITY PACIFIC NATIONAL BANK
ET AL. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/21/00 [36]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. The senior lien creditor has obtained relief from the automatic stay. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

44. 00-91232-A-13 JAMES G. FERREIRA
AJH #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
PART II
7/26/00 [9]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d). **The opposition filed August 11 is**

stricken as untimely. Opposition was due five court days prior to the hearing. This was filed two court days prior to the hearing and after this ruling was prepared. The opposition consists of any attorney declaration. It includes nothing but inadmissible hearsay regarding what the debtor told the attorney. If timely, the opposition would not be persuasive.

45. 99-95234-A-13 ERIC & AMBER HOYT
OHP #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
PART II
7/7/00 [24]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

46. 99-91935-A-13 RUSSELL & ELIZABETH MONTGOMERY
SRA #1
SECURITY NATIONAL SERVICING CORPORATION ET AL. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
6/26/00 [24]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is denied as moot. The debtors proposed a plan that provided for the surrender of the movant's real property collateral to its predecessor in interest. The plan provided at Part IV, paragraph E:

> If the Debtor proposes to surrender collateral to a secured creditor, the Debtor shall promptly accomplish the surrender unless the creditor refuses to accept the property. . . . As to real property, this means that the Debtor consents to termination of the automatic stay to permit a non-judicial foreclosure of the real property and the Debtor shall surrender possession immediately after the foreclosure sale. Entry of the confirmation order shall constitute an order modifying the automatic stay of 11 U.S.C. § 362 to allow any secured creditor whose collateral is being surrendered to receive or foreclose upon that collateral and to exercise its rights and remedies against its collateral.

The plan was confirmed on July 19, 1999. Therefore, there is no need to

terminate the stay because it was terminated when the plan was confirmed. The order denying the motion may clarify that the prior termination of the stay inures to the benefit of the movant, Nationscredit's successor.

47. 00-90138-A-13 LESPER BEAN
CD #1
HFTA FIRST FINANCIAL CORP. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/20/00 [12]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

48. 00-91759-A-13 SHANA M. AGRELLA
FW #2

CONT. HEARING ON MOTION TO AMEND CHAPTER 13 CASE
7/14/00 [27]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

49. 00-91565-A-13 CHRIS & KATHY WISNIESKI
AJH #1
BANKERS TRUST COMPANY OF CALIFORNIA VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
PART II
7/31/00 [25]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period

specified in Cal. Civ. Code § 2924g(d).

50. 00-91565-A-13 CHRIS & KATHY WISNIESKI
RDG #1

HEARING ON TRUSTEE'S OBJECTION TO DEBTORS CLAIM OF EXEMPTIONS
7/7/00 [18]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

51. 99-94671-A-13 MIGUEL & ANGIE HERRERA
TJS #1
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/25/00 [63]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

52. 97-92173-A-13 RONALD & ELIZABETH MONK
ASW #1
OCWEN FEDERAL BANK FSB VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/26/00 [35]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Fees and costs of $675 or, if less, the amount actually billed to the movant by counsel, are awarded pursuant to 11 U.S.C. § 506(b). These fees may be enforced against the movant's collateral. This award may not be enforced against the debtor. However, if the debtor wishes to cure the loan default, these fees must be paid. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

53. 98-95785-A-13 JOSEPH & MARY ALVAREZ
TJH #1
MIDFIRST BANK VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/19/00 [26]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay four post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

54. 00-90088-A-13 ANTHONY & MARYAN FULLER
EGS #1
FIRST NATIONWIDE MORTGAGE CORP. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
PART II
7/24/00 [23]

Final Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered as consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter will be resolved without oral argument. The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three post-petition installments. Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d).

55. 00-90300-A-13 RAY & TRACY PARMER
CLH #2

HEARING ON MOTION FOR ORDER TO SELL REAL PROPERTY
(OST)
8/7/00 [28]

Final Ruling: While the debtors requested an order shortening time for this hearing, they failed to submit a proposed order. The request for that order is granted. In the future, if no order is submitted, the underlying motion will not appear on calendar.

The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee for distribution to creditors pursuant to the plan. However, unless this payment is sufficient to pay all unsecured creditors in full, this payment will not pay off the plan. The plan requires payments for 60 months. While the plan promises a 0% dividend to unsecured creditors, it also provides: "Unless the allowed unsecured claims are paid in full, the plan payments shall be all of the Debtor's projected disposable income and shall continue for not less than 36 months. The plan shall not terminate earlier than the stated plan term or 36 months, whichever is longer."

56. 99-94003-A-13 MANUEL & ELIZABETH VASQUEZ
FW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HOUSEHOLD RETAIL SERVICES, INC.
7/7/00 [17]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). The claimant has attached a blank exemplar of its credit agreement. That agreement provides for a security interest in items purchased with the credit card. However, there is no evidence this credit card agreement was signed by the debtors. Further, when a security interest is claimed in the property of the debtors, the proof of claim must be accompanied by evidence of perfection of the security interest. Fed.R.Bankr.P. 3001(d). Since this appears to be a consumer credit situation, filing a financing statement was probably unnecessary to perfect a security interest. Cal. Comm. Code § 9302(1)(d). However, the proof of claim identifies no particular security nor a general security type. This is important since the credit card is good for purchases only at Costco. Costco sells items that are both durable and nondurable. If the debtors purchased only food, for example, the security is illusory since the food has certainly be consumed. Without some indication of the security and some evidence that is durable, the proof of claim is not entitled to be deemed prima facie evidence of the claim's validity. Fed.R.Bankr.P. 3001(f). It is allowed as a general unsecured claim.

57. 99-94003-A-13 MANUEL & ELIZABETH VASQUEZ
FW #2

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF MOCSE FEDERAL CREDIT UNION
7/7/00 [14]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition use of a credit card issued by the claimant. Such claims are not entitled to priority status. 11 U.S.C. § 507.

58. 00-90206-A-13 JOAQUIN WILLIAM ALVERNAZ
BBS #1

CONT. HEARING ON OBJECTIONS TO DEBTOR'S CLAIM OF

EXEMPTIONS FILED BY JAMES MELLO
4/3/00 [11]

Final Ruling: The parties have continued the hearing on this matter to August 29, 2000, at 9:00 a.m.

59. 00-90606-A-13 JERRY & JANET LEFORS
VLC #1

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/20/00 [15]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

60. 00-92211-A-13 DARRYL & MARYLINDA COLLINS
SW #1

HEARING ON OBJECTION TO DEBTORS' CHAPTER 13 PLAN FILED BY GMAC
7/19/00 [10]

Final Ruling: The debtors have stipulated to increase the valuation of the vehicle to the amount claimed by the objecting creditor and to modify the plan to provide for a secured claim of $9,465.63. On condition that the plan is so modified, the objection is overruled. **Note: counsel for the creditor should alter its records to reflect the correct address for debtors' counsel – it is 1301 K Street and not 1303 K Street.**

61. 00-92012-A-13 LUKE & CYNTHIA DEBOARD
FW #1

HEARING ON MOTION TO VALUE COLLATERAL HELD BY HENDRICKSON'S TURLOCK MUSIC
7/14/00 [10]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $500 on the date of the petition. $500 of its claim is an allowed secured claim. When paid $500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

62. 00-92016-A-13 ROY & BETTY NORDFELT
FW #1

HEARING ON MOTION TO VALUE COLLATERAL OF PEOPLES BANK
7/11/00 [9]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $14,000 on the date of the petition. $14,000 of its claim is an allowed secured claim. When paid $14,000, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim

is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

63. 96-90517-A-13 DONALD PETER GAREIS
VLC #2

HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN
7/19/00 [37]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

64. 99-91517-A-13 MICHAEL R. VANSLYKE
CCR #1

HEARING ON MOTION FOR ORDER TO SELL PROPERTY FREE AND CLEAR OF LIENS
8/8/00

Final Ruling: The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. The request to sell free and clear of liens is denied. The motion itself indicates that liens of record will be paid in full. Further, to the extent the debtor may wish to not pay a particular lien, the showing required by 11 U.S.C. § 363(f) has not been made. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee for distribution to creditors pursuant to the plan after deducting any costs of sale and payment of the homestead exemption amount to the debtor.

65. 98-90020-A-13 EDWARD & CUTIE GEORGE
FW #1

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/10/00 [32]

Final Ruling: The motion is granted on condition that it is further modified to provide for the secured claims of Providian and Alliance as requested by the trustee. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

66. 98-90020-A-13 EDWARD & CUTIE GEORGE
FW #2

HEARING ON MOTION TO VALUE COLLATERAL OF G & G MOTORS
7/10/00 [36]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent’s collateral had a value of $2,400 on the date of the petition. $2,400 of its claim is an allowed secured claim. When paid $2,400, the secured claim shall be satisfied in full and the collateral free of the respondent’s lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

67. 00-91522-A-13 MICHAEL & PATRICIA SILVA
FW #1

HEARING ON MOTION TO VALUE COLLATERAL OF FIRESIDE THRIFT

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $13,000 on the date of the petition. $13,000 of its claim is an allowed secured claim. When paid $13,000, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

68. 00-91522-A-13 MICHAEL & PATRICIA SILVA
FW #4

HEARING ON MOTION TO AMEND CHAPTER 13 PLAN
7/13/00 [26]

Final Ruling: The motion is granted. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

69. 00-91622-A-13 DAVID & CONNIE RILL
RLE #1

HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY FORD MOTOR CREDIT COMPANY
7/14/00 [14]

Final Ruling: The parties have continued the hearing on this matter to September 12, 2000, at 9:00 a.m.

70. 97-94619-A-13 DAVID & MARIAN SANDERSON
SAS #2

HEARING ON FIRST MOTION TO MODIFY CHAPTER 13 PLAN
7/14/00 [26]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

71. 00-91723-A-13 PHILLIP & BECKY SCHMITT
RDG #1

HEARING ON TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS
7/12/00 [28]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

72. 00-91425-A-13 STEPHEN LANCASTER
FW #1

HEARING ON MOTION TO AMEND DEBTOR'S UNCONFIRMED CHAPTER 13 PLAN
7/11/00 [21]

Final Ruling: The motion is granted. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

73. 00-92131-A-13 DARRELL & JANET BILLINGS
FW #2

HEARING ON MOTION TO VALUE COLLATERAL OF NORWEST FINANCIAL
7/12/00 [16]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The subject property has a value of $128,000 and is encumbered by a first and second deed of trust. The first deed of trust holder is owed $110,000 and the second deed of trust holder is owed $22,000. Therefore, the respondent's deed of trust is completely under-collateralized. No portion of its claim is an allowed secured claim. The claim is allowed as general unsecured claim unless previously paid by the trustee as secured claim.

Any assertion by the creditor that its claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). At least one circuit court has now followed Lam. See In re Bartee, ___ F.3d ___ , 2000 W.L. 621400 (5th Cir. 2000). While this court has published a decision indicating that 11 U.S.C. § 1322(b)(2) and Nobelman v. American Savings Bank, 508 U.S. 324 (1993) operate to prevent a debtor from "stripping off" a completely under-secured home mortgage or deed of trust, Lam is to the contrary. Cf. In re Shandrew, 210 B.R. 829 (Bankr. E.D. Cal. 1997). Other recent cases following Shandrew, do not persuade the court to abandon Lam. See In re Enriquez, 244 B.R. 156 (Bankr. S.D. Cal. 2000); In re Ortiz, 241 B.R. 466 (Bankr. E.D. Cal. 1999). Whether or not it is compelled to follow Lam, the court considers Lam binding. Lam permits the "strip off" despite section 1322(b)(2) if the claim is completely under-secured.

If the claim is completely under-secured, no interest need be paid on the claim

except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0 because the value of its collateral is $0, no interest need be paid as required by 11 U.S.C. § 1325(a)(5)(B)(ii). A review of the schedules indicates that section 1325(a)(4) does not require interest be paid on general unsecured claims.

Any argument that the plan violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991) is overruled. The plan does not constitute an objection to the claim pursuant to Fed.R.Bankr.P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and it also includes a separate motion to value the claim as permitted by Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The plan is clearly labeled as both a plan and a motion to value the collateral. The plan was served by the trustee on all creditors, and, because the plan incorporated a motion to value collateral, was again served by the debtor with a notice that the collateral for the claim would be valued at the same time the plan was confirmed. That motion is supported by a declaration of the debtor as to the value of the real property that is the debtor's principal residence. There is nothing about the plan and the motion, or the process to confirm the plan and consider the motion, which amounts to a denial of due process.

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. Evidence in the form of the debtors' declaration supports the motion. The debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

To the extent the creditor objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed.R.Bankr.P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed.R.Bankr.P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed.R.Bankr.P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. Once completed, if the creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. Alternatively, the court would entertain a declaratory relief action prior to discharge in order to establish that, upon completion of the plan and discharge, the debtor would be entitled to a reconveyance of the deed of trust.

In the meantime, the court is merely valuing collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing what the claims are likely to be is vital to assessing the feasibility of a plan and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

In In re Laskin, 222 B.R. 872 (B.A.P. 9th Cir. 1998), the court recognized a distinction between chapter 7 and chapter 13 cases. In the former, an attempt

to strip off a lien requires a complaint to determine validity, priority, or extent of the subject lien. But in a chapter 13 case lien stripping is intertwined with the claims allowance and confirmation processes. ". . . [Section] 1322(b)(2), . . . provides a Chapter 13 plan may 'modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ,' and . . . 'secured' in § 1322(b)(2) is defined by reference to § 506(a) (providing for bifurcation of a claim into secured and unsecured portions) . . . ." Section 1325(a)(5)(B)(ii) also "requires the determination of secured claims in the confirmation of Chapter 13 plans. There are no equivalent provisions in Chapter 7. . . ." Laskin, 222 B.R. at 875. Neither confirmation of a plan, valuation under section 506(a), nor a claim objection necessarily require an adversary proceeding. Fed.R.Bankr.P. 3007.

Nor is the court finding that the "in rem" liability of the property serving as collateral is discharged by this ruling as the objecting creditor asserts in its objection. The only discharge the debtor will receive will come at the conclusion of the case after all payments are paid and all claims provided for by the plan are satisfied.

Nor is there any necessity that the creditor first file a proof of claim. The court is not considering an objection to a claim. There is no need to wait to value the debtor's assets. Knowing the value of the assets, including the subject property, is necessary to determine if the plan complies with 11 U.S.C. § 1325(a)(5) and to determine whether the-best-interests-of-creditors test of 11 U.S.C. § 1325(a)(4) has been satisfied.

To the extent the creditor asserts the valuation should be delayed to some point other than the effective date of the plan, this assertion is without merit. The logical time to value collateral and other assets is at confirmation or the effective date of the plan (which are usually, in the chapter 13 context, at approximately the same time). Would it make any sense to value a car at the end of the case? It would not. It makes no more sense to value the house at the end of the case or any other time after confirmation.

Courts have valued collateral as of the petition date, the confirmation date, the effective date of a plan, the confirmation hearing date, the filing date of the plan, the date of the motion to value collateral, and the date of sale. In re Wood, 190 B.R. 788, 790-792 (Bankr. M.D. Pa. 1996) (cases collected); Patrick Fitzgerald, "Bankruptcy Code Section 506(a) and Undersecured Creditors: What Date Valuation?" 34 UCLA L.Rev. 1953 (1987). Most courts conclude that collateral should be valued at the time of confirmation or at the plan's effective date. See e.g., In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995). This court agrees with the bankruptcy court's analysis in Kennedy -- as a general proposition, valuation of a creditor's collateral and the fixing of its secured claim is done at the time of confirmation. In re Kennedy, 177 B.R. at 971-973.

The "preservation and maintenance" clause of the deed of trust is not triggered by this ruling. That clause requires the debtor to keep the subject property free of liens and encumbrances that threaten the priority of the objecting creditor's lien and to keep the property in good repair.

74. 00-90932-A-13 ADRIAN & LOLETTEE JOHNSON HEARING ON MOTION FOR
TLC #3 VALUATION OF SECURITY OF

SANTEL FEDERAL CREDIT UNION
7/10/00 [32]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $7,900 on the date of the petition. $7,900 of its claim is an allowed secured claim. When paid $7,900, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

75. 00-90932-A-13 ADRIAN & LOLETTEE JOHNSON
TLC #4

HEARING ON MOTION FOR VALUATION OF SECURITY OF FORD MOTOR CREDIT
7/10/00 [36]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $4,500 on the date of the petition. $4,500 of its claim is an allowed secured claim. When paid $4,500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

76. 00-90932-A-13 ADRIAN & LOLETTEE JOHNSON
TLC #5

HEARING ON MOTION FOR CONFIRMATION OF FIRST AMENDED CHAPTER 13 PLAN
7/7/00 [29]

Final Ruling: The court finds this matter to be suitable for disposition without oral argument. The motion is denied. This case was filed before April 15, 2000. Therefore, General Order 97-02 governs this case and the standard plan to be filed. The debtors, however, have filed the standard plan required by General Order 00-02. This is the wrong plan.

77. 98-94532-A-13 STEVEN & RENEE ATWOOD
SPM #3

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/19/00 [43]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

78. 00-92033-A-13 RONALD & EMILY KILGORE
FW #1

HEARING ON MOTION TO VALUE COLLATERAL OF TRANSOUTH
7/11/00 [8]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $5,000 on the date of the petition. $5,000 of its claim is an allowed secured claim. When paid $5,000, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

79. 00-92134-A-13 NICK & BONNIE THOMPSON
VLC #1

HEARING ON MOTION TO VALUE COLLATERAL OF HOUSEHOLD FINANCE SERVICES
7/13/00 [9]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $18,575 on the date of the petition. $18,575 of its claim is an allowed secured claim. When paid $18,575, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

80. 00-92134-A-13 NICK & BONNIE THOMPSON
VLC #2

HEARING ON MOTION TO VALUE COLLATERAL OF WFS FINANCIAL
7/13/00 [12]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $13,237 on the date of the petition. $13,237 of its claim is an allowed secured claim. When paid $13,237, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

81. 00-92134-A-13 NICK & BONNIE THOMPSON
VLC #3

HEARING ON MOTION TO VALUE COLLATERAL OF SAMUELS
7/13/00 [15]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $200 on the date of the petition. $200 of its claim is an allowed secured claim. When paid $200, the secured claim shall be satisfied in full and the collateral

free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

82. 99-93534-A-13 JUAN MARTIN GUTIERREZ
FW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF BENEFICIAL
7/7/00 [28]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). When a security interest is claimed in the property of the debtor, the proof of claim must be accompanied by evidence of perfection of the security interest. Fed.R.Bankr.P. 3001(d). Since this appears to be a consumer credit situation, filing a financing statement was probably unnecessary to perfect a security interest. Cal. Comm. Code § 9302(1)(d). However, the proof of claim does not attach any security documentation nor does it identify any particular security or a general security type. Without some indication of an attached security interest and the type of security, the proof of claim is not entitled to be deemed prima facie evidence of the claim's validity. Fed.R.Bankr.P. 3001(f). It is allowed as a general unsecured claim.

83. 00-91939-A-13 KEITH & STACEY YOUNG
FW #1

HEARING ON MOTION TO VALUE COLLATERAL OF ARCADIA FINANCIAL
7/14/00 [12]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $8,500 on the date of the petition. $8,500 of its claim is an allowed secured claim. When paid $8,500, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

84. 00-91543-A-13 DAVID DANIEL RAMEY
GAA #1

HEARING ON MOTION TO CONFIRM SECOND AMENDED CHAPTER 13 PLAN
7/20/00 [15]

Final Ruling: The motion is granted. There are no timely objections to the amended plan. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

85. 00-92045-A-13 SONNY HERRERA, SR. & ZENAIDA HERRERA
VLC #1
HEARING ON MOTION TO VALUE COLLATERAL OF FIRESIDE THRIFT
7/13/00 [25]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $9,325 on the date of the petition. $9,325 of its claim is an allowed secured claim. When paid $9,325, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

86. 00-92045-A-13 SONNY HERRERA, SR. & ZENAIDA HERRERA
VLC #2
HEARING ON MOTION TO VALUE COLLATERAL OF AMERICREDIT
7/13/00 [28]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $8,505 on the date of the petition. $8,505 of its claim is an allowed secured claim. When paid $8,505, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

87. 00-92045-A-13 SONNY HERRERA, SR. & ZENAIDA HERRERA
VLC #3
HEARING ON MOTION TO VALUE COLLATERAL OF HEILIG MEYERS
7/13/00 [31]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $600 on the date of the petition. $600 of its claim is an allowed secured claim. When paid $600, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

88. 98-94145-A-13 REX MCBRIDE
FW #2
HEARING ON MOTION TO SELL REAL PROPERTY (OST)
8/3/00 [56]

Final Ruling: The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in a manner consistent with the plan. From the surplus sale proceeds, $14,080 must be paid over to the trustee for distribution to creditors pursuant to the plan.

89. 97-92047-A-13 JAVIER & JESSICA CONTRERAS
VLC #2

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/13/00 [97]

Final Ruling: The parties have continued the hearing on this matter to August 29, 2000, at 9:00 a.m.

90. 00-90552-A-13 GARRY & DEBORAH POPE
WW #2

CONT. HEARING ON MOTION TO CONFIRM SECOND AMENDED CHAPTER 13 PLAN
6/8/00 [42]

Final Ruling: This motion is denied as moot. It has been superceded by the motion to confirm a third amended plan.

91. 00-90552-A-13 GARRY & DEBORAH POPE
WW #3

HEARING ON DEBTORS' MOTION TO CONFIRM THIRD AMENDED CHAPTER 13 PLAN
7/28/00 [49]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

92. 99-93152-A-13 TOM & JANET COLLINS
FW #3

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/13/00 [52]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

93. 00-91456-A-13 BRYAN & CHERYL KIRSCHENMAN
RDG #1

HEARING ON TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS
7/12/00 [20]

Final Ruling: The matter on calendar is denied or overruled as moot – the case was dismissed on August 3, 2000.

94. 99-94456-A-13 MICHAEL CHARLES RASMUSSEN
FW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HOUSEHOLD RETAIL SERVICES, INC.
7/7/00 [17]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). When a security interest is claimed in the property of the debtor, the proof of claim must be accompanied evidence of perfection of

the security interest. Fed.R.Bankr.P. 3001(d). Since this appears to be a consumer credit situation, filing a financing statement was probably unnecessary to perfect a security interest. Cal. Comm. Code § 9302(1)(d). However, the proof of claim does not attach any security documentation nor does it identify any particular security or a general security type. Without some indication of an attached security interest and the type of security, the proof of claim is not entitled to be deemed prima facie evidence of the claim's validity. Fed.R.Bankr.P. 3001(f). It is allowed as a general unsecured claim.

95. 00-90262-A-13 SEAN DUFTON & CAMEO HANSEN — HEARING ON MOTION TO INCUR DEBT
FW #1 — 7/12/00 [16]

Final Ruling: The motion is granted. The debtors have established a need for the loan and the vehicle they will purchase with it.

96. 99-93163-A-13 JANET M. HERNANDEZ — HEARING ON MOTION TO CONFIRM MODIFIED CHAPTER 13 PLAN
RMK #2 — 7/20/00 [39]

Final Ruling: The parties have continued the hearing on this matter to September 26, 2000, at 9:00 a.m.

97. 98-93566-A-13 STEPHEN & BETTY WALLINGTON — HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
VLC #4 — 7/20/00 [25]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

98. 95-92974-A-13 EDWARD & CLAIRE VARA — HEARING ON DEBTORS' OBJECTION TO ALLOWANCE OF CLAIM FILED BY EDUCATIONAL CREDIT MANAGEMENT CORP.
DN #3 — 7/7/00 [55]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The last date to file a timely proof of claim was January 30, 1996. The proof of claim was filed on June 19, 2000. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

99. 97-92774-A-13 ROBERT & SYNTHIA LOFTON
FW #3

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/13/00 [53]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

100. 00-91376-A-13 SHANE WOLD
ALC #1

HEARING ON MOTION TO CONFIRM FIRST MODIFIED CHAPTER 13 PLAN
7/14/00 [53]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

101. 00-91081-A-13 GILBERTO & FELIPA GARCIA
PFF #3

HEARING ON MOTION TO CONFIRM DEBTORS' SECOND AMENDED CHAPTER 13 PLAN
7/6/00 [25]

Final Ruling: The movant or the objecting party has voluntarily dismissed the matter on calendar.

102. 98-90981-A-13 JACK & KAREN MEYERS
VLC #3

HEARING ON MOTION TO INCUR FURTHER INDEBTEDNESS FOR PURCHASE OF REAL PROPERTY
7/13/00 [46]

Final Ruling: The motion is granted. The debtors have established a need for the loan and the residence they will purchase with it.

103. 00-91885-A-13 PHILLIP BOUNDS
FW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF THE MONTEREY COUNTY DISTRICT ATTORNEY
7/3/00 [12]

Final Ruling: The objection is sustained. The basis of the objection is that a portion of the support claim is for recoupment of welfare. This is borne out by the documentation attached to the proof of claim. This is not entitled to priority pursuant to 11 U.S.C. § 506(a)(7). The claim is allowed as a general unsecured claim.

104. 98-95685-A-13 TINA S. BAMBICO
HWW #1

HEARING ON MOTION TO CONFIRM FIRST MODIFIED CHAPTER 13 PLAN
7/20/00 [59]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

105. 98-96189-A-13 HENRY & LINDA SNAPP
VLC #2

HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN
7/20/00 [37]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. **The opposition filed on August 14, 2000, is stricken as untimely. It was due five court days prior to the hearing. Fed.R.Bankr.P. 9014-1, Part II(c). It was filed one day before the hearing and after the court reviewed the matter. If the creditor wishes to pursue the matter, it must proceed under Fed.R.Civ.P. 60(b).**

106. 97-92090-A-13 RODNEY ECKERDT, SR.
SAS #3

HEARING ON DEBTORS' THIRD MOTION TO MODIFY CHAPTER 13 PLAN
7/12/00 [47]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

107. 99-93891-A-13 MICHAEL & CHERIE MORRIS
FW #1

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF DICK BRUHN
7/6/00 [27]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. The claim asserts priority pursuant to 11 U.S.C. § 507(a)(3). This section gives priority to wages, salaries, and commissions. The documentation attached to the proof of claim indicates that it is based on a claim of reimbursement for uniforms. This is neither a wage, salary, or commission.

108. 99-93891-A-13 MICHAEL & CHERIE MORRIS
FW #2

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HOUSEHOLD RETAIL SERVICES, INC.
7/6/00 [30]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). The claimant has attached a blank exemplar of its credit agreement. That agreement provides for a security interest in items purchased with the credit card. However, there is no evidence this credit card agreement was signed by the debtors. Further, when a security interest is claimed in the property of the debtors, the proof of claim must be accompanied by evidence of perfection of the security interest. Fed.R.Bankr.P. 3001(d). Since this appears to be a consumer credit situation, filing a financing statement was probably unnecessary to perfect a security interest. Cal. Comm.

Code § 9302(1)(d). However, the proof of claim identifies no particular security nor a general security type. This is important since the credit card is good for purchases only at Costco. Costco sells items that are both durable and nondurable. If the debtors purchased only food, for example, the security is illusory since the food has certainly be consumed. Without some indication of the security and some evidence that is durable, the proof of claim is not entitled to be deemed prima facie evidence of the claim's validity. Fed.R.Bankr.P. 3001(f). It is allowed as a general unsecured claim.

109. 99-95092-A-13 ANNA M. FACHA
FW #4

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF CENTRAL VALLEY COLLECTIONS 7/7/00 [42]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition provision of medical services to the debtor. Such claims are not entitled to priority status. 11 U.S.C. § 507.

110. 00-92594-A-13 JUDY K. GARNER
DCJ #1

HEARING ON OBJECTION TO CONFIRMATION OF PLAN COMBINED WITH MOTION FOR DISMISSAL FILED BY CAPITAL PACIFIC MORTGAGE CO. 7/21/00 [7]

Final Ruling: The debtor has failed to respond to the matter on calendar. Because the debtor has come forward with no opposition, this matter is suitable for disposition without hearing.

The motion to dismiss is granted. First, it is apparent from a review of Schedules I and J that the debtor's income is not sufficient to make plan payments as well as monthly payments on the first and second deeds of trust. This is consistent with the debtor's recent income. See answer to Question 1, Statement of Financial Affairs. To make the plan and mortgage payments, the debtor is dependent on a $2000 monthly contribution from "roommates." There is no evidence that these roommates in fact have the ability to contribute this amount, and assuming an ability, the inclination to do so.

Second, the debtor deeded the property securing the creditor's claim to a third party within a year of the petition. This transfer was not disclosed in response to Question 10 of the Statement of Financial Affairs. The third person deeded in back to the debtor in a deed dated August 30, 1998, even though the third person did not receive a deed from the debtor until November 16, 1999. The deed from the third person to the debtor was recorded on July 3, 2000, just three days prior to the filing of the petition.

The debtor has not explained her lack of candor with the court nor the Byzantine maneuvering that preceded the petition. The court draws the conclusion that the debtor has and is engaged in a course of conduct designed only to prevent the movant from foreclosing upon its security. This case and the proposed plan have been filed in bad faith. The case is dismissed.

111. 00-92295-A-13 LAURENCE A. BUTLER
RLE #1

HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO VALUE COLLATERAL FILED BY CHRYSLER FINANCIAL COMPANY L.L.C. 7/24/00 [10]

Final Ruling: The parties have continued the hearing on this matter to September 12, 2000, at 9:00 a.m.

112. 99-92196-A-13 FAUSTINO & VIVIAN SALDIVAR
FW #1

HEARING ON MOTION TO INCUR DEBT 7/25/00 [28]

Final Ruling: The motion is granted. The debtors have established a need for the loan and the vehicle they will purchase with it.

113. 00-92097-A-13 FRANK & MARY AVILA
SAS #1

HEARING ON MOTION TO VALUE COLLATERAL OF HOUSEHOLD RETAIL SERVICE 7/13/00 [14]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a), is granted. The respondent's collateral had a value of $1,000 on the date of the petition. $1,000 of its claim is an allowed secured claim. When paid $1,000, the secured claim shall be satisfied in full and the collateral free of the respondent's lien. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

114. 00-91098-A-13 DOROTHY E. RUIZ
DN #1

CONT. HEARING ON MOTION TO DETERMINE VALUE OF COLLATERAL OF FIRST PLUS FINANCIAL 6/27/00 [17]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The subject property has a value of $81,000 and is encumbered by a first deed of trust. The first deed of trust holder is owed $95,863.52. Therefore, the respondent's deed of trust is completely under-collateralized. No portion of its claim is an allowed secured claim. The claim is allowed as general unsecured claim unless previously paid by the trustee as secured claim.

Any assertion by the creditor that its claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). At least one circuit court has now followed Lam. See In re Bartee, ___ F.3d ___ , 2000 W.L. 621400 (5th Cir. 2000). While this court has published a decision indicating that 11 U.S.C. § 1322(b)(2) and Nobelman v. American Savings Bank, 508 U.S. 324 (1993) operate to prevent a debtor from "stripping off" a completely under-secured home mortgage or deed of trust, Lam is to the

contrary. Cf. In re Shandrew, 210 B.R. 829 (Bankr. E.D. Cal. 1997). Other recent cases following Shandrew, do not persuade the court to abandon Lam. See In re Enriquez, 244 B.R. 156 (Bankr. S.D. Cal. 2000); In re Ortiz, 241 B.R. 466 (Bankr. E.D. Cal. 1999). Whether or not it is compelled to follow Lam, the court considers Lam binding. Lam permits the "strip off" despite section 1322(b)(2) if the claim is completely under-secured.

If the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0 because the value of its collateral is $0, no interest need be paid as required by 11 U.S.C. § 1325(a)(5)(B)(ii). A review of the schedules indicates that section 1325(a)(4) does not require interest be paid on general unsecured claims.

Any argument that the plan violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991) is overruled. The plan does not constitute an objection to the claim pursuant to Fed.R.Bankr.P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and it also includes a separate motion to value the claim as permitted by Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The plan is clearly labeled as both a plan and a motion to value the collateral. The plan was served by the trustee on all creditors, and, because the plan incorporated a motion to value collateral, was again served by the debtor with a notice that the collateral for the claim would be valued at the same time the plan was confirmed. That motion is supported by a declaration of the debtor as to the value of the real property that is the debtor's principal residence. There is nothing about the plan and the motion, or the process to confirm the plan and consider the motion, which amounts to a denial of due process.

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled. Evidence in the form of the debtors' declaration supports the motion. The debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

To the extent the creditor objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed.R.Bankr.P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed.R.Bankr.P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed.R.Bankr.P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. Once completed, if the creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. Alternatively, the court would entertain a declaratory relief action prior to discharge in order to establish that, upon completion of the plan and discharge, the debtor would be entitled to a reconveyance of the deed of trust.

In the meantime, the court is merely valuing collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in

connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing what the claims are likely to be is vital to assessing the feasibility of a plan and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

In In re Laskin, 222 B.R. 872 (B.A.P. 9th Cir. 1998), the court recognized a distinction between chapter 7 and chapter 13 cases. In the former, an attempt to strip off a lien requires a complaint to determine validity, priority, or extent of the subject lien. But in a chapter 13 case lien stripping is intertwined with the claims allowance and confirmation processes. ". . . [Section] 1322(b)(2), . . . provides a Chapter 13 plan may 'modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ,' and . . . 'secured' in § 1322(b)(2) is defined by reference to § 506(a) (providing for bifurcation of a claim into secured and unsecured portions) . . . ." Section 1325(a)(5)(B)(ii) also "requires the determination of secured claims in the confirmation of Chapter 13 plans. There are no equivalent provisions in Chapter 7. . . ." Laskin, 222 B.R. at 875. Neither confirmation of a plan, valuation under section 506(a), nor a claim objection necessarily require an adversary proceeding. Fed.R.Bankr.P. 3007.

Nor is the court finding that the "in rem" liability of the property serving as collateral is discharged by this ruling as the objecting creditor asserts in its objection. The only discharge the debtor will receive will come at the conclusion of the case after all payments are paid and all claims provided for by the plan are satisfied.

Nor is there any necessity that the creditor first file a proof of claim. The court is not considering an objection to a claim. There is no need to wait to value the debtor's assets. Knowing the value of the assets, including the subject property, is necessary to determine if the plan complies with 11 U.S.C. § 1325(a)(5) and to determine whether the-best-interests-of-creditors test of 11 U.S.C. § 1325(a)(4) has been satisfied.

To the extent the creditor asserts the valuation should be delayed to some point other than the effective date of the plan, this assertion is without merit. The logical time to value collateral and other assets is at confirmation or the effective date of the plan (which are usually, in the chapter 13 context, at approximately the same time). Would it make any sense to value a car at the end of the case? It would not. It makes no more sense to value the house at the end of the case or any other time after confirmation.

Courts have valued collateral as of the petition date, the confirmation date, the effective date of a plan, the confirmation hearing date, the filing date of the plan, the date of the motion to value collateral, and the date of sale. In re Wood, 190 B.R. 788, 790-792 (Bankr. M.D. Pa. 1996) (cases collected); Patrick Fitzgerald, "Bankruptcy Code Section 506(a) and Undersecured Creditors: What Date Valuation?" 34 UCLA L.Rev. 1953 (1987). Most courts conclude that collateral should be valued at the time of confirmation or at the plan's effective date. See e.g., In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995). This court agrees with the bankruptcy court's analysis in Kennedy -- as a general proposition, valuation of a creditor's collateral and the fixing of its secured claim is done at the time of confirmation. In re Kennedy, 177 B.R. at 971-973.

The "preservation and maintenance" clause of the deed of trust is not triggered by this ruling. That clause requires the debtor to keep the subject property free of liens and encumbrances that threaten the priority of the objecting creditor's lien and to keep the property in good repair.

115. 99-94599-A-13 ELLIS & WILLIE STEWART
VLC #3

HEARING ON OBJECTION TO ALLOWANCE OF CLAIM NO. #6 FILED BY BENEFICIAL FINANCE CORP. NOW RESURGENT ACQUISITION TRUST
7/13/00 [35]

Final Ruling: The creditor has failed to respond to the matter on calendar. Because it has come forward with no opposition, this matter is suitable for disposition without hearing. The objection is sustained. When a claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. Fed.R.Bankr.P. 3001(c). When a security interest is claimed in the property of the debtor, the proof of claim must be accompanied by evidence of perfection of the security interest. Fed.R.Bankr.P. 3001(d). Since this appears to be a consumer credit situation, filing a financing statement was probably unnecessary to perfect a security interest. Cal. Comm. Code § 9302(1)(d). However, the proof of claim does not attach any security documentation nor does it identify any particular security or a general security type. Without some indication of an attached security interest and the type of security, the proof of claim is not entitled to be deemed prima facie evidence of the claim's validity. Fed.R.Bankr.P. 3001(f). It is allowed as a general unsecured claim.

116. 99-94294-A-13 DAVID & LUCILLE MCNEIR

AMERIQUEST MORTGAGE CO. VS.

HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY
3/8/00 [51]

Final Ruling: The parties have continued the hearing on this matter to August 29, 2000, at 9:00 a.m.

117. 00-91803-A-13 DANNY & ROSEMARIE JONES — HEARING ON MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN
7/17/00 [12]

Final Ruling: The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

118. 00-91023-A-13 GURDIV & AMARJIT SINGH — HEARING ON MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN
7/26/00 [32]

Final Ruling: The court finds that this matter is suitable for disposition without oral argument. The motion is denied and the objection is sustained. This case was filed prior to April 15, 2000. Therefore, General Order 97-02, not General Order 00-02, is applicable. The debtor has inappropriately used the form plan required by General Order 00-02.